Supreme Court, U. S.
FILED
JUN 16 1980
MICHAEL RODAK, JR., CLE

79-1971

IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM _____

NO. A-964

CHRIS U. JACOBSEN,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AND
ASSERTION FOR SUMMARY REVERSAL

Attorney for Respondent:
M. Carr Ferguson
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

For Petitioner:
Chris U. Jacobsen
440 W. 6th Street
Suite 205
Irving, Texas 75060
(214) 253-3966

INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW . . .	3,4
CONSTITUTIONAL PROVISIONS AND STATUTES	4,5,6
STATEMENT OF FACTS	6
REASONS FOR GRANTING THE WRIT: 1) The shifting of the burden of proof in this case is contrary to prior Supreme Court rulings . . .	12
2) The use of Criminal Information in this case is in violation of the Fifth Amendment mandate requiring an indictment	18
CONCLUSION	22
SIGNATURE	24
PROOF OF SERVICE	24
EXHIBIT: Copy of United States Court of Appeals for the Fifth Circuit affirmation of Petitioner's conviction	A

INDEX OF AUTHORITIES

CASES	Page
Albrecht vs U.S.	20,21
Beavers vs Henkel	20
Ex Parte Wilson	21,22
In the Matter of Peter J. Classen	19,20
Sandstrom vs State of Montana . .	15,16
U. S. vs Murdock	17,18
CONSTITUTIONAL PROVISIONS	
V Amendment, U. S. Constitution .	4,5
FEDERAL RULES OF CRIMINAL PROCEDURE	
Rule 7(a)	5
STATUTES	
Title 26, U. S. Code, Section 7203	5,6,7 & 12

IN THE SUPREME COURT OF THE
UNITED STATES
_____ TERM _____

NO. A-964

* *

CHRIS U. JACOBSEN, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

* *

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
AND
ASSERTION FOR SUMMARY REVERSAL

* *

Petitioner, Chris U. Jacobsen, urges the Supreme Court of the United States to issue a Writ of Certiorari and grant Summary Reversal of the Judgment of the United States Court of Appeals for the Fifth Circuit with regard to the affirmation of a Criminal Conviction

rendered on March 7, 1980, and subsequent denial of Rehearing ordered on April 16, 1980.

OPINIONS BELOW

No opinion was handed down in this cause by the United States Court of Appeals for the Fifth Circuit or by the trial Court, the Fifth Circuit Court of Appeals denial is attached as Petitioner's Exhibit A.

JURISDICTION

The judgment of the Fifth Circuit affirming the criminal conviction in the Federal District Court was filed on March 7, 1980. A timely Petition for Renearing was denied on April 16, 1980. An extention of time, until June 15, 1980, in which to file this Petition was granted by this Court on May 9, 1980.

This Petition was filed on June 16, 1980, being timely as June 15, 1980 falls on a Sunday. The jurisdiction of this Court is invoked pursuant to 28 USC 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1) The question is respectfully raised whether the shifting of the burden of proof to the defendant during the voir dire and in the trial Court's jury instructions amounts to error requiring summary reversal.

2 a) The question is respectfully raised whether long-standing procedure on the filing of criminal information according to statute passed by Congress without regard to prior rulings of the Supreme Court should be allowed to continue when such procedure violates the basic right of a defendant to an

indictment as prescribed by the Fifth Amendment to the United States Constitution.

b) The question is respectfully raised whether the filing of Criminal Information gives the trial Court jurisdiction over a defendant when the statute under which the defendant is charged provides for the penalty of imprisonment.

c) The question is respectfully raised whether the conduct of a defendant and/or the subsequent trial and conviction of a defendant furnishes jurisdiction, thereby nullifying the Fifth Amendment mandate of an indictment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

CONSTITUTION OF THE UNITED STATES, AMENDMENT V:

> No person shall be held to answer for a capital or otherwise

infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

RULE 7(a), FEDERAL RULES OF CRIMINAL PROCEDURE

Use of indictment or information. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court.

TITLE 26 UNITED STATES CODE, SECTION 7203

Any person required under this title to pay any estimated tax or

> tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

STATEMENT OF FACTS

Trial was had on this cause before the Honorable Robert Madden Hill, United States District Judge for the Northern District of Texas at Dallas. Petitioner was found guilty by the jury on a three count Information as to all counts on the 16th day of May, 1979. Petitioner was sentenced on the 18th day of June, 1979, in the United States District Court for

the Northern District of Texas at Dallas before the Honorable Robert Madden Hill, to serve one year in the penitentiary, to pay costs of prosecution, and four years probation.

A timely Notice of Appeal was filed on the 28th day of June, 1979. Execution of the jail sentence and probationary period was stayed pending the outcome of the appeal of this matter to the Fifth Circuit Court of Appeals.

Petitioner, Chris U. Jacobsen, was charged by Information in the United States District Court for the Northern District of Texas, Dallas Division, of willful failure to make an income tax return pursuant to Title 26 U.S.C., Section 7203, for the taxable years 1973, 1974 and 1975. Said Information was filed on the 28th day of February, 1979,

in the United States District Court for the Northern District of Texas, Dallas Division. Subsequent to the filing of said Information, and on the 15th day of March, 1979, a plea of not guilty to the three counts was entered. During this period of time, the Petitioner had several Court appointed attorneys; however, on the 12th day of April, 1979, Bernard J. Goldman, Esq. of the law firm of Goldman & Goldman, filed a Notion for Appearance as Retained Counsel of Record.

Trial of the matter was set for the 14th day of May, 1979, and a verdict was returned on the 16th day of May, 1979. A verdict of guilty on Count One, Count Two and Count Three was returned. Petitioner was free on the prior bond posted to the time of sentencing.

Sentencing was set for the 15th day

of June, 1979. On the 15th day of June, 1979, Judge Hill continued the sentencing to 8:30 A.M. on the 18th day of June, 1979. On the 18th day of June, 1979, the Petitioner appeared before the Honorable Robert Madden Hill with local counsel from Dallas, Texas, Peter Chamberlain, Esq. Judge Hill sentenced the Petitioner to one year in the penitentiary, to pay the costs of prosecution and four years probation. Execution of the jail sentence and probationary period was stayed pending the outcome of the appeal of this matter to the Fifth Circuit Court of Appeals.

The mandate, ordering the Petitioner to report to start serving his sentence, issued from the Fifth Circuit Court of Appeals on April 23, 1980. Petitioner's Motion for Recall of the Mandate was

filed with the Fifth Circuit Court of Appeals on May 5, 1980, and was subsequently denied on May 16, 1980, then requiring the Petitioner to report to begin serving his sentence on June 2, 1980.

Petitioner then released Bernard J. Goldman, Esq. and proceeded to petition, through his parole officer, the United States District Court Judge, the Honorable Robert Madden Hill, for a continuance, until June 16th, 1980, of the date which the Petitioner must commence serving his sentence. The continuance was granted by Judge Hill by Order filed May 27th, 1980 in the United States District Court for the Northern District of Texas, Dallas Division.

The Petitioner, Chris U. Jacobsen, is a self-employed person. His self-

employment consists of landscaping and outdoor design type of business.

The Petitioner got started in the tax movement by attending seminars given by Marvin Cooley and Bill Drexler. At these seminars the Constitution was discussed and the rights that a taxpayer has to assert on his form 1040 when filing the 1040 form with the Internal Revenue Service. It was discussed that the taxpayer could assert his Fifth Amendment rights on the tax return relying on prior Court decisions.

The Petitioner filed his first Fifth Amendment return for the calendar year 1973, and subsequently filed Fifth Amendment returns for the calendar years 1974 and 1975.

Consequently, because of these Fifth Amendment returns filed for those years,

the Petitioner was charged by Information with violation of Title 26 U.S.C., Section 7203 for each of the years involved.

The United States Court of Appeals for the Fifth Circuit upheld the jury decision of the United States District Court for the Northern District of Texas, Dallas Division, without rendering an opinion.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit has affirmed, without opinion, the decision of the trial court at Dallas, thus leaving to this court alone, the determination of a substantial federal question regarding the shifting of the burden of proof to the Petitioner/defendant during the course of trial; and the Petitioner is also raising an important question of federal law regarding the filing of

Criminal Information.

The defendant never carries the burden of proof. It is always incumbent and the burden is always upon the government to prove, beyond a reasonable doubt, the guilt of the defendant.

In this case, the burden of proof was shifted to the defendant during the voir dire of prospective jurors by the trial judge, and by the trial court's instructions on the law to the jury after the close of the arguments.

Both the U. S. Attorney and the attorney for the Petitioner filed with the District Court proposed questions to be asked of the potential jurors. The government's request for questions on voir dire examination are contained in the record at page 61. The particular question that the Petitioner is concerned

with is question number 4, which reads:

> "Are you familiar with the income tax protest movement, which should not be confused with the legal type of action taken by individuals such as Howard Jarvis in Proposition 13 in California. I am speaking of the illegal protest movement."

Petitioner's counsel objected to the phraseology of the question as it was presented because of its prejudicial nature. Petitioner's counsel was overruled and the Court restated the question in this manner:

> "Is any member of the panel familiar with the alleged income tax protest movement, now this should not be confused with legal type of action taken by individuals, so forth, but the alleged income tax protest movement."

The question, at this time, was so highly prejudicial as to influence the jury that the Petitioner's action regarding his tax returns was not of a

legal type with no caveat to any defense that the Petitioner might assert.

This type of question as given to the prospective jurors was an abuse of discretion by the trial judge, and is contrary to the decision of this Court in Sandstrom v. State of Montana (1979), 99 S.Ct. 2450, wherein it was ruled that a reasonable juror could have interpreted a ruling from the bench as being conclusive and, in that instance, a mandate form the Court that the jury find the defendant guilty.

In the Court's charge to the jury the burden of proof was again placed upon the Petitioner. Instruction number 14 reads, in part:

> "... You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted."

Instruction number 15 reads, in part:

> "You may not treat the defendant's belief of the unconstitutionality of the income tax as a possible negation of criminal intent. The defendant's motivation in this case, the fact that he was engaged in a protest in his sincere belief that he was acting in good cause, is not an acceptable legal defense as justification."(Emphasis supplied)

In Sandstrom, supra, Mr. Justice Brennan reasoned,

> "First, a reasonable jury could well have interpreted that presumption as 'conclusive', that is, not technically as a presumption at all, but rather as an irrebuttable direction by the Court to find intent once convinced of the facts triggering the presumption" See also Mulaney, et al vs. Wilbur, 421 U.S. 684 (1975) and Morrissette vs. United States, 342 U.S. 246 (1952).

Every man is entitled to a fair and impartial trial, and at no time during such trial does the defendant carry the burden to prove his innocence.

Also, Instruction number 15 is

contrary to the law as handed down in U. S. vs. Murdock (1933), 290 U.S. 389 wherein the trial Judge stated in his charge to the jury his opinion that the defendant was guilty beyond a reasonable doubt, as the Supreme Court showed in its opinion:

> "'So far as the facts are concerned in this case, gentlemen of the jury, I want to instruct you that whatever the court may say as to the facts, is only the court's view. You are at liberty to entirely disregard it. The court feels from the evidence in this case that the Government has sustained the burden cast upon it by the law and has proved that this defendant is guilty in manner and form as charged beyond a reasonable doubt.'
>
> The respondent's request for an instruction in the following words was refused:
>
> 'If you believe that the reasons stated by the defendant in his refusal to answer questions were given in good faith and based upon his actual belief, you should consider that in determining whether or not his refusal to answer the questions was wilful (sic).'
>
> In the circumstances we think the trial judge erred in stating the

> opinion that the respondent was guilty beyond a reasonable doubt. A federal judge may analyze the evidence, comment upon it, and express his views with regard to the testimony of witnesses. He may advise the jury in respect to the facts, but the decision of issues of fact must be fairly left to the jury. Patton v. United States, 281 U.S. 276, 288; Quercia v. United States, 289 U.S. 466."

In Instruction number 6, the Court set forth the burden that the government had to carry. The third element, that of willfulness, was completely taken away even though lip service was superficially given to the word "willfully" in Instruction number 15, supra.

Thus, all instructions relating to specific intent or any good faith beliefs have been negated by the Court's charge to the jury in Instruction number 15.

2) In this case the Petitioner was charged by Criminal Information, not by

Indictment as required by the Fifth Amendment to the United States Constitution when one is accused of having committed an infamous crime.

The term "capital or otherwise infamous crime" has already been defined by this Court in Mackin v. United States, 117 U.S. 348; Parkinson v. United States, 121 U.S. 281; United States v. DeWalt, 128 U.S. 393; Medley, Petitioner, 134 U.S. 160, 169; and in Re Mills, 135 U.S. 263, 267, as the Court stated in the matter of Peter J. Classen, 140 U.S. 200 (1891):

> "The purport of the rulings in those cases is, that a crime which is punishable by imprisonment in the state prison or penitentiary, as is the crime of which the defendant was convicted, is an infamous crime, whether the accused is or is not sentenced or put to hard labor; and that, in determining whether the crime is infamous, the question is, whether it is one for which the

> statute authorizes the court to award an infamous punishment, and not whether the punishment ultimately awarded is an infamous one."

In Beavers v. Henkel (1904), 194 U.S. 73 the Court pointed out that the individual is entitled to reasonable protection and, with respect to the bringing of an individual to trial, noted, at page 84:

> "While many states, in the exercise of their undoubted sovereignty (Hurtado v. California, 110 U.S. 516; 28 Led 232; 4 S.Ct. 111, 292), have provided for trials of criminal offenses upon information filed by the prosecuting officer, and without any previous inquiry or action by a grand jury, the national Constitution, in its solicitude for the protection of the individual, requires an indictment as a prerequisite to a trial. ..." (Emphasis supplied)

Petitioner's actions in this case thus far have not amounted to a waiver of an indictment, as pointed out in Albrecht vs. United States (1927), 273 U.S. 1, at

page 8:

> "... A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court..."

Congress is not at liberty to legislate in a manner which diminishes the Fifth Amendment. This Court ruled on that issue in Ex Parte Wilson (1885), 114 U.S. 426:

> "Nor can we accede to the proposition, which has been sometimes maintained, that no crime is infamous, within the meaning of the Fifth Amendment, that has not been so declared by Congress. See United States v. Wynn, 3 McCrary, 266, and 11 Fed. Rep. 57; United States v. Petit, 11 Fed. Rep. 58; United States v. Cross, 1 McArthur, 149. The purpose of the Amendment was to limit the powers of the Legislature, as well as of the prosecuting officers of the United States. ... But the Constitution protecting every one from being prosecuted without the intervention of a grand jury for any crime which is subject by law to an infamous punishment, no declaration of Congress is needed to secure, or competent to defeat, the

constitutional safeguard."

Rule 7(a) of the Federal Rules of Criminal Procedure, allowing the United States attorneys to proceed by the filing of Criminal Information rather than by indictment as required by the Fifth Amendment, clearly violates the right of the Petitioner to an indictment in this case, as the statute under which the Petitioner is charged provides for the penalty of imprisonment, thereby making the crime of which the Petitioner is accused, an infamous crime.

CONCLUSION

The affirmation of the conviction of the Petitioner by the lower court is in conflict with this Court's prior rulings on burden of proof; and on the requirement of an indictment when the statute under which an individual is

charged provides for the penalty of imprisonment.

THEREFORE, the Petitioner, Chris U. Jacobsen, contends that it is necessary that this Court exercise its jurisdiction and powers of supervision in order that:

a) The Petitioner be charged only according to law;

b) The departure in this case from the accepted and usual course of judicial proceedings be corrected;

c) That an important question of federal law regarding the use of Criminal Information be settled by this Court.

For reasons stated above, the Petition for Writ of Certiorari should be granted and Summary Reversal entered.

Respectfully submitted,

_____

Chris U. Jacobsen

AFFIDAVIT OF SERVICE

I, Chris U. Jacobsen, being of sound mind, over 21 years of age and competent to testify, do hereby depose and state that I placed in the U. S. Mail on this date three copies of the foregoing Petition for Writ of Certiorari and Assertion for Summary Reversal addressed to M. Carr Ferguson, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; and one copy to the Solicitor General at the same address.

Date: June 14, 1980.

_____

Chris U. Jacobsen

STATE OF TEXAS
COUNTY OF DALLAS

Sworn and attested to before me this 14th day of June, 1980.

Commission
Expires:

_____

_____ Notary Public

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

DO NOT PUBLISH

No. 79-5343
Summary Calendar*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRIS U. JACOBSEN,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Texas

(MARCH 7, 1980)

Before GOLDBERG, RUBIN and POLITZ, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1/]

PETITIONER'S EXHIBIT A

*Fed. R. App. P. 34(a); 5th Cir. R. 18.

1/See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.